

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE  
STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION  
FOR THE LOS ESTEROS CRITICAL  
ENERGY FACILITY 2, PHASE 1**

**Docket No. 03-AFC-2**

<b>DOCKET</b> <b>03-AFC-2</b>
<b>DATE</b> MAR 29 2005
<b>RECD</b> MAR 29 2005

**COMMITTEE ORDER DENYING PETITION TO REOPEN THE RECORD**

Upon consideration of a Petition<sup>1</sup> to Reopen the Record filed by Californians for Renewable Energy, Inc. (CARE or Petitioner) on March 15, 2005, the Committee designated to conduct proceedings in this matter makes the following findings:

1. On November 22, 2004, a Motion to Intervene With Financial Hardship (dated November 21, 2004) in the above-captioned proceeding was filed by:  
Californians for Renewable Energy, Inc. (CARE)  
Michael E. Boyd, President  
5439 Soquel Drive  
Soquel, CA 95073
2. The Motion was granted at the Prehearing Conference held on November 22, 2004, "on the condition that Petitioner accepts the case as it finds it, that is, that no delay in the scheduling or completion of evidentiary hearing or preparation of the Presiding Member's Proposed Decision will occur and that the time requirements contained in the Notice of Evidentiary Hearing will be honored by Petitioner." Petitioner was allowed to Intervene on its express assertion that it would only raise the issues enumerated in its Prehearing Conference Statement.
3. The Petition seeks to reopen the record to present evidence regarding damage to a bicycle path constructed on Caltrans right-of-way adjacent to the Los Esteros Critical Energy Facility. This issue was not raised in the Prehearing Conference Statement filed by CARE nor at any time by any party as a part of the evidentiary proceedings.
4. Evidentiary Hearings were closed on December 2, 2004.
5. The issue described in the Petition is outside the scope of this proceeding and is more properly resolved in a compliance proceeding or informally among the interested parties, organizations and persons. If it is not so resolved, it can be raised in Phase 2 of these Proceedings without delaying the conclusion of Phase 1 and without prejudice to the merits of the underlying claim.
6. The Petition was docketed on the day before the full Commission was scheduled to


<sup>1</sup> The document docketed by CARE is entitled a "Motion." It is, however, the functional equivalent of a Petition and will be treated as such for all purposes herein, even though CARE should be well aware of the format for documents submitted to the California Energy Commission.

decide whether or not to accept the Presiding Member's Proposed Decision (PMPD)<sup>2</sup>. Staff and Applicant were given no time to respond to said Petition prior to the full Commission Hearing.

7. Granting of the Petition would delay the Commission Hearing currently scheduled for today. Petitioner does not present any compelling reason for delaying this hearing.
8. The Petition does not support an order reopening the Evidentiary Hearings. Had CARE been a more timely Intervenor in this matter and attended the Staff PSA workshop on October 22, 2004, the Committee could have been aware of the issue. Had the Silicon Valley Bicycle Coalition desired to present the matter as a part of the Evidentiary Hearings, it could have sought leave to Intervene in October, 2004. The Coalition chose not to do so.
9. The matter has been brought to the attention of the Compliance Manager.

THEREFORE, the Committee Orders that the Petition to Reopen in this matter is DENIED.

Done orally at the Commission Meeting on March 16, 2005, and signed on March 29, 2005, in Sacramento, California.

  
\_\_\_\_\_  
JACKALYNE PFANNENSTIEL  
Vice Chair and Associate Member  
Los Esteros 2 AFC Committee

Proof of Service List (Revised on 12/16/04)  
filed with Original Document. Mailed from  
Sacramento on 3/29/05.

<sup>2</sup> The Hearing Advisor's office was never served with a copy of the petition.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION  
FOR THE LOS ESTEROS CRITICAL  
ENERGY FACILITY, PHASE 1  
(LOS ESTEROS 2)

DOCKET No. 03-AFC-2

(Revised 12/16/04)

***PROOF OF SERVICE***

I, Maggie Read, declare that on March 29, 2005, I deposited copies of the attached Committee Order Denying Petition to Reopen the Record in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

**DOCKET UNIT**

Send the original signed document plus the required 12 copies to the address below:

CEC DOCKET UNIT  
Attn: Docket No. 03-AFC-2  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
**docket@energy.state.ca.us**

In addition to the documents sent to the Commission Docket Unit, also send individual copies of any documents to:

**APPLICANT**

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Portland, OR 97232

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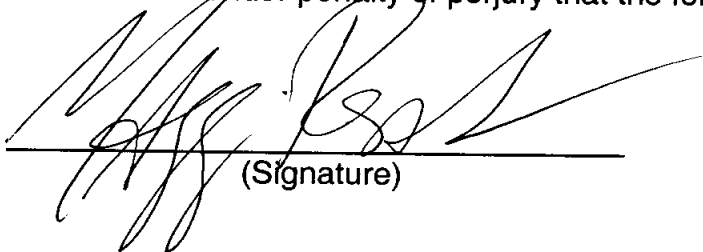
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I declare that under penalty of perjury that the foregoing is true and correct.



(Signature)

## INTERNAL DISTRIBUTION LIST

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